IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-1674

SANTA ROSA BAND OF INDIANS, et al.,
Plaintiffs and Respondents

vs.

KINGS COUNTY, et al.,
Defendants and Petitioners

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Brief of Amicus Curiae State of California Department of Housing and Community Development in Opposition to the Petition for Writ of Certiorari

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JURISDICTIONAL STATEMENT

Pursuant to 28 U.S.C. § 1254(1), Kings County has petitioned this Honorable Court for a writ of certiorari to review the decision of the United States Court of Appeals for the Ninth Circuit in *Santa Rosa Band of Indians v. Kings County,* 532 F.2d 655 (9th Cir. 1975). This amicus curiae brief is respectfully submitted by the State of California Department of Housing and Community Development pursuant to Rule 42(1) of the Rules of the Supreme

Court of the United States with the consent of all the parties to the case.

Interest of the Amicus Curiae State of California Department of Housing and Community Development

The State of California Department of Housing and Community Development (hereinafter Department) is a statutory State department within the Business and Transportation Agency. The Department has a vital interest in this case arising out of its statutory duties towards California Indians in relation to housing and community development issues. A decision contrary to the position advocated by the Santa Rosa Band of Indians would adversely affect the Department's efforts to aid California Indians on Federally owned trust lands and put increased demands on already scarce financial resources available for Indian housing and community development activities.

The Department is the principal State agency charged with effectuating the housing policy of the State of California as set out in the Housing and Home Finance Act of 1975, Chapter 1, Statutes of 1975, Health and Safety Code §§ 41100 *et seq.* This act assigns to the Department general duties which include responsibility for coordinating the federal-state relationship in housing and community development, continually evaluating the impact upon the State of federal policies and programs affecting housing and community development, and encouraging the

full utilization of available federal programs. Health and Safety Code § 41108. In addition, the act includes provisions specifically recognizing the needs of California Indians. Section 41161 of the Health and Safety Code authorizes the Department to:

> "furnish counseling and guidance services to aid any governmental agency or any private or non-profit organization or persons in securing the financial aid or cooperation of governmental agencies in the undertaking, construction, maintenance, operation or financing of housing for Indians, . . ."

and to:

> "contract for or sponsor, subject to the availability of federal funds, experimental or demonstration projects for permanently fixed or mobile housing designed to meet the special needs of . . . Indians"

Of even greater significance is Section 41173 of the Health and Safety Code which empowers the Department to:

> "provide comprehensive technical assistance to tribal housing authorities, housing sponsors, and governmental agencies on reservations, rancherias, and on public domain to facilitate the planning and orderly development of suitable, decent, safe, and sanitary housing for American Indians residing in such areas. Such assistance may include technical assistance in land use planning, natural and environmental resource planning, and economic resource planning. Upon request of the gov-

erning body of a reservation or rancheria, the department may act on behalf of the tribal housing authority and perform the functions thereof and for such purposes shall have all the powers granted to housing authorities . . ."

To implement its technical assistance role the Department operates the California Indian Assistance Program under an interagency agreement with the Governor's Office of Planning and Research.

I. Magnitude of the Problem Facing the Department in Providing Assistance to Indians in California

In its efforts to assist in securing adequate housing for reservation Indians, to promote development of Indian resources, and to facilitate coordination among the various state and federal agencies so as to assure the delivery of mandated services, the Department's California Indian Assistance Program confronts a housing problem of an overwhelming dimension. As the California Advisory Commission on Indian Affairs reported to the Governor and Legislature in 1966:

> "[t]he conditions under which Indians live in California are the lowest of any minority group. Housing is grossly inadequate: living quarters are small, crowded and poorly furnished; existing houses are structurally unsound; foundations are lacking in many cases; the building materials used, together with faulty electrical wiring and the unsafe use of gas, kerosene, and wood stoves, constitute a constant menace to life; houses generally do not provide the minimum necessary protection from extreme climatic conditions. Reports from federal, state and local agencies agree with the commission's findings: from 30 to 50 percent of the homes need complete replacement and 40 to 60 percent need improvements; taken together, this means that 90 percent of all homes need replacement or repairing to provide adequate living quarters for California Indians." *California Advisory Commission on Indian Affairs, Progress Report to the Governor and the Legislature on Indians in Rural and Reservation Areas,* February 1966, at 10.

The 1974 Bureau of Indian Affairs inventory of the housing needs of California Indians residing on trust lands indicates that of 1,611 Indian-occupied units located on trust lands, 891 were in substandard condition. Of those substandard units 679 were dilapidated beyond repair, requiring complete replacement. In addition, 593 units were needed to fulfill the additional formal requests received by the Bureau from enrolled tribal members presently without reservation housing of any sort. *Consolidated Housing Inventory, FY 74, On-Trust Land Housing Chart, Bureau of Indian Affairs, Sacramento Area Office.*

Living conditions on the Santa Rosa Rancheria bear striking testimony to the extent of deprivation throughout the state. The most recent survey of the Rancheria indicates a total resident population of approximately 144 tribal members; yet, there are only 18 permanent homes in the community. *Hirshen, Gammill, Trumbo, and Cook, Report to the California Department of Housing and Community Development,*

Small Parcel Survey of the Santa Rosa Rancheria, June 1976, at 1–2. These homes, most of which were built in 1967 by the Bureau of Indian Affairs, are rapidly deteriorating and already require extensive rehabilitation if they are to provide a decent, safe, and healthy living environment.[1]

Even more serious than the condition of the houses, however, is the extent of overcrowding on the Rancheria. There are approximately three nuclear family units per house. *Hirshen Report, supra,* at 2. Some houses have as many as 14 people living in them. *Id.* The extreme overcrowding coupled with lack of sufficient family income for maintenance, further increases the rate at which existing housing is deteriorating. It was this overcrowding in substandard dwellings that the plaintiffs, the Barrios and Baga families, sought to escape by purchasing mobilehomes through the Bureau of Indian Affairs Housing Improvement Program.

Inadequate living conditions such as those found on the Santa Rosa Rancheria are reflected in the health of those who must endure them. The California Advisory Commission on Indian Affairs reported in 1970 that, among California Indians, "the death rate from

[1] The Santa Rosa Rancheria Housing Assistance Plan (HAP), prepared pursuant to § 104(a)(4) of the Housing and Community Development Act of 1974, 42 U.S.C. 5304, and submitted to the U.S. Department of Housing and Urban Development as part of the Rancheria's 1976 Title I Block Grant Application, notes that all housing on the Rancheria is substandard. A substandard dwelling unit is defined by the HAP as "one which contains a condition which places the occupants thereof in a situation which is unsafe and/or unhealthy and therefore unfit and undignified for human habitation." HAP, at 5.

influenza and pneumonia is more than twice that of the total population; tuberculosis, six times; [and] accidents, four times . . ." *California Advisory Commission on Indian Affairs, Final Report,* 1969, at 21. Even more striking, "the average age at death for Indians is twenty years less than the average for all Californians." *Id.* at 21. In testimony given before the Subcommittee on Indian Affairs of the United States Senate, Dr. Elmer A. Johnson, Assistant Surgeon General and Director of the Indian Health Services, pointed to the connection between Indian health problems and the environment in which Indians live:

> The lack of decent, safe and sanitary housing for the Indian population contributes to a number of their unusual health problems. For example, while the infant death rates for Indians and Alaska Natives compare quite favorably to that of the U.S. general population during the first 28 days of life; the rate of death of Indian and Alaska Native infants between the 28th day of life and the 11th month is more than twice the similar rate for the U.S. general population. One of the causes of this significant increase in death rate during the post neonatal period is the poor home environment into which the infant is brought. The crowded living conditions, inadequate protection from the elements, and generally poor sanitary conditions prevalent in the typical substandard home, represent a hazardous environment for the Indian infant.
>
> Many of the infectious diseases which are usually prevalent among the Indian and Alaska Native populations result from, or are aggravated

by, the poor home environment. These diseases include gastroenteritis, dysentery, influenza, pneumonia and otitis-media.

Accidents are the leading cause of death for Indians and Alaska Natives with a death rate of nearly 4 times that of the general population. Accidental injuries resulted in over 200,000 outpatient visits during fiscal year 1974. This represents a significant patient care workload at the health facilities. Nearly 40% of the accidents resulting in a first clinic visit during 1974 occurred in or around the home. Many of these falls, burns and other accidental injuries occurring in the home environment could have been avoided if the home were well designed and constructed and properly equipped.

One of the essentials, if the Indian and Alaska Native people are to achieve the desired level of health, is a decent home located in a well planned community. Adequate space for family living, for sleeping areas, for studying and for personal privacy are essential considerations along with proper heating to protect the family from the elements, an ample supply of safe potable water, a sanitary means of disposing of waste and an equipped area for storage and preparation of food." Hearings on Indian Housing Before the Subcommittee on Indian Affairs, Committee of Interior and Insular Affairs, United States Senate, 94th Cong., 1st Sess. (1975) at 19–20.

The cost of rehabilitating existing reservation housing to a standard fit for human habitation far exceeds the resources made available by existing federal programs. Yet the cost of repair and replacement of the

existing housing stock represents only a fraction of the financial commitment that would be necessary were consideration given to the needs of those enrolled families holding valid homesite assignments on the Rancheria but unable to occupy them because housing cannot be obtained.

II. The Rationale for Not Applying Local Government Zoning and Building Ordinances in Indian Country

Given the tremendous need and the limited resources made available by the Federal Government to address this need, it is essential that the funding which is provided have maximum impact. Department efforts to upgrade the deplorable housing and living conditions found on reservations and rancherias are centered around maximizing the effectiveness of the limited federal resources made available through agencies such as the Bureau of Indian Affairs and the Indian Health Services. These efforts historically have been conducted within the framework of federal housing standards. The application of local zoning and building ordinances in place of the uniform federal standards under which the programs are presently administered would burden and potentially block the delivery of these vital services and facilities. *Santa Rosa Band of Indians v. Kings County,* 532 F.2d 655 (9th Cir. 1975) at 668. It has been argued that the administration of local ordinances need not inhibit departmental programs, but, where approval is required to take action, the power to grant that approval is also the power to deny it. That this is the

case with respect to the zoning ordinance Kings County seeks to impose on Indian land is established by the fact that the county has on several occasions refused to approve requests by county residents to locate permanent family dwellings on agriculturally zoned land.[2]

Finally, the technical assistance role of this Department is aimed not only at securing adequate housing but also, in conformity with state and federal policy, at strengthening tribal self-government. To relegate tribal governments to a level below that of counties and municipalities would be to deprive them of significant jurisdiction essential to self-government.

III. The Issues Presented Have Already Been Satisfactorily Resolved by This Court

Kings County argues in its petition for a writ of certiorari that Public Law 83-280, 28 U.S.C. § 1360, confers upon counties authority to enforce their local building and zoning ordinances on land held in trust by the federal government for the use and benefit of Indian tribes. Petitioners seek to support their request by an extended analysis and criticism of the decision of the Ninth Circuit Court in *Santa Rosa Band of Indians v. Kings County,* 532 F.2d 655 (9th Cir. 1975). It seems unnecessary, however, to address individually the arguments presented by Kings County in view of the fact that virtually all of the arguments

[2] Affidavit by the Planning Director of Kings County, Defendants Exhibit AA. Kings County has filed a motion with this Court to augment the record by inclusion of this affidavit. Kings County Petition for a Writ of Certiorari, p. 4.

upon which petitioners rely have been considered by this Court in its very recent decision in *Bryan v. Itasca County,* -------- U.S. --------, No. 75-5027 (Slip Opinion, June 14, 1976). In holding that Public Law 280 did not confer upon counties authority to impose a personal property tax on an Indian owned mobilehome located on trust lands, the *Bryan* decision expressly suggests that its reasoning with respect to tax laws applies equally to all civil regulatory ordinances:

> "[I]f Congress in enacting Public Law 280 had intended to confer upon the States general civil regulatory powers, including taxation, over reservation Indians, it would have expressly said so." *Bryan,* Slip Opinion at 17.

In the course of reaching this conclusion, the Court examined all of the major issues to which petitioner's brief and arguments are addressed. Those issues are:

1. The ambiguity of the controlling language in Public Law 280 which provides that "civil laws of [the] State . . . that are of general application to private persons or private property shall have the same force and effect within . . . Indian Country as they have elsewhere within the State." Public Law 83-280, Section 4(a), 28 U.S.C. § 1360(a). (Compare *Bryan,* Slip Opinion at 18 with petitioner's brief at 12, 16–17, and 40.)

2. The import of the canon of construction that "statutes passed for the benefit of dependent Indian tribes are to be liberally construed, doubtful expressions being resolved in favor of the Indians."

Alaska Pacific Fisheries v. United States, 248 U.S. 78, 89 (1918) as cited in *Bryan,* Slip Opinion at 18–19. (Compare *Bryan,* Slip Opinion at 5 and 18–19 with Petitioner's brief at 12–13, 16 and 40.)

3. The implications of the legislative history in construing congressional policy and intent in enacting Public Law 280. (Compare *Bryan,* Slip Opinion at 5–12, and 14–17 with Petitioner's brief at 10–12, 17–19, 23, and 40.)

4. The appropriateness of reading into Public Law 280 through a negative implication of inclusion, a grant of jurisdiction for which the statute does not in its terms expressly provide. (Compare *Bryan,* Slip Opinion at 4–5, and 16–18 with Petitioner's brief at 13 and 22–23.)

5. The significance of intervening legislative enactments in construing prior congressional intent. (Compare *Bryan,* Slip Opinion at 12–14 with Petitioner's brief at 13–15.)

In each case the conclusion reached by this Court in the *Bryan* decision directly controverts the result suggested by Kings County in its petition for certiorari. There can be little doubt that this Court's disposition of these questions applies to those aspects of a county's civil regulatory authority involved in the *Santa Rosa* controversy as well as fully as they apply to the question of taxation involved in *Bryan.*

CONCLUSION

In light of the extensive consideration in *Bryan v. Itasca County* of the issues raised by petitioners, little purpose would be served by granting the petition for a writ of certiorari. Accordingly the petition for a writ of certiorari should be denied.

Respectfully submitted,

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